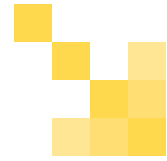


Romania

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GENERAL

1. Do the main laws that regulate the employment relationship apply to:

- Foreign nationals working in your jurisdiction?
- Nationals of your jurisdiction working abroad?

Laws applicable to foreign nationals

Foreign nationals are subject to the Romanian Labour Code if they either:

- Are employed under an employment contract and perform work in Romania for a Romanian employer.
- Have acquired refugee status and are employed under an employment contract in Romania.

Otherwise, the parties can choose the law that applies to their employment contract (*Rome Convention on the law applicable to contractual obligations (1980/934/EEC)*).

Foreign nationals are subject to Romanian mandatory laws, if Romanian law applies in the absence of an express choice of law. The Romanian mandatory laws also apply regardless of a choice of foreign law, unless the foreign law offers greater protection. The mandatory provisions are those that govern employees' rights, such as working hours.

If they do not make an express choice, Romanian law automatically applies to foreign nationals who work in Romania, even if they are temporarily employed in another country. Mandatory Romanian employment law provisions apply (*see above*).

Laws applicable to nationals working abroad

Romanian law does not apply to nationals working abroad, unless the parties choose Romanian law to govern the employment contract or Romanian law applies in the absence of a choice of law (*see above, Laws applicable to foreign nationals*).

EMPLOYING PEOPLE

2. Are there any age or nationality restrictions on managers or company directors? If so, please give details.

Age restrictions

There are no age restrictions on managers or company directors.

Nationality restrictions

There are no nationality restrictions on managers or company directors.

3. Are any grants or incentives available for employing people? If so, please give details.

Employers receive a subsidy or are exempt from paying contributions to the unemployment fund if they employ certain categories of person, such as:

- **Graduates.** Employers who recruit graduates are exempt for 12 months from paying contributions to the unemployment fund for these graduates. During the 12 months, they also receive a monthly subsidy of between one and 1.5 times the national minimum monthly salary (*see Question 6*), depending on the employee's level of education. Employers who hire disabled graduates benefit from these rights for 18 months. To receive these benefits, the employer must undertake to employ the graduates for at least three years.
- **Unemployed persons.** Employers who recruit certain categories of unemployed person are exempt for 12 months from paying contributions to their unemployment fund. During the 12 months, they receive a monthly subsidy of one month's national minimum salary. To receive these benefits, the employer must undertake to employ the unemployed persons for at least two years.
- **The disabled.** Employers who recruit disabled employees when they have no legal obligation to do so receive, for a 12-month period, a monthly subsidy of one month's national minimum salary. To receive this benefit, the employer must undertake to employ the disabled persons for at least two years.

4. What permits do foreign nationals require to work in your country? Please explain:

- How these permits are obtained.
- How much they cost.
- How long the process takes.

Required permits

Several permits can be necessary to live and work in Romania:

- **Registration certificate.** EU nationals can enter and reside in Romania if their stay does not exceed three months. If they stay longer, they need registration certificates. These are valid for the duration of the employment contract.
- **Work permit.** European Economic Area (EEA) nationals do not require work permits. A non-EEA national requires a work permit to work in Romania, unless he falls into certain statutory categories, for example, if he:
 - has a legally established permanent residence in Romania;
 - is the head of the subsidiary or representative office in Romania of a company with a registered office abroad;
 - is seconded to Romania when working in an EEA member state with a work permit.

Work permits last for one year and then are automatically extended for successive periods until the employment contract terminates.

- **Long-stay visa.** To work in Romania, non-EEA nationals must have a long-stay visa, in addition to a work permit if they are from certain countries. Annex 1 of Regulation (EC) No. 539/2001 lists those countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement.
- **Temporary-stay permit.** Non-EEA citizens who work in Romania based on a work permit can request extension of their residence period. In this case, they need a temporary stay permit for work purposes, which can be renewed successively at intervals of up to one year.

Obtaining permits

The process for obtaining permits is as follows:

- **Registration certificate.** Within 90 days of entry into Romania, EU nationals must request certificates from the Romanian Immigration Office by supplying:
 - a copy of their passport or ID; and
 - a notarised copy of their employment contract or a certificate issued by their employer.

- **Work permit.** The employer must file an application together with certain documents to the Romanian Immigration Office.
- **Long-stay visa.** Foreign nationals apply to the Romanian diplomatic mission or consulate in their jurisdiction within 30 days of the issue of their work permit. The Visas National Centre then considers the application.
- **Temporary-stay permit.** Foreign nationals apply for the permit at the Romanian Immigration Office.

Cost

The costs for permits are as follows:

- **Registration certificate.** The cost is RON1 (about US\$0.4).
- **Work permit.** The cost is RON656 (about US\$280).
- **Long-stay visa.** The cost is between RON128 (about US\$55) and RON257 (about US\$110).
- **Temporary-stay permit.** The cost is RON400 (about US\$170).

Length of process

The length of the process to obtain permits varies as follows:

- **Registration certificate.** Certificates are issued on the same day that they are requested.
- **Work permit.** Work permits are generally issued after 30 days, although this can be extended by another 15 days if additional examination of the case is required.
- **Long-stay visa.** Long-stay visas are generally issued after 30 days.
- **Temporary-stay permit.** Permits are generally issued after 30 days, although this can be extended by another 15 days if additional examination of the case is required.

TERMS OF EMPLOYMENT

5. What terms govern the employment relationship? In particular:

- Is a written employment contract or statement of employment terms required?
- Are any terms implied by law into the employment contract (in addition to the terms referred to in *Question 1*)?
- Are collective agreements with trade unions common (generally or in specific industries)?

Written employment contract

Employment contracts must be entered into in writing and in the Romanian language (*Labour Code*). However, although the lack of written form triggers a fine for the employer it does not affect the validity of the contract. An unwritten employment contract is

presumed to be indefinite, and the parties can use any evidence to prove contractual terms and work performed, without having to conclude a separate statement of terms.

A written employment contract must contain certain details, including:

- The parties' identities.
- The place of work.
- Any mobility clause.
- The contract's duration.
- Holiday.
- Remuneration.

Implied terms

Terms can be implied into a contract through:

- Statute.
- Collective bargaining agreements (CBAs) (*see below, Collective agreements*).
- Work regulations.
- Custom and practice.

Collective agreements

CBAs are common in Romania. They can be concluded between groups of companies, or at company, industry or national level. CBAs concluded at national level apply to all employers and employees.

6. Is there a minimum wage? If so, please give details, in particular whether it applies to all employees, regardless of their age and experience.

The minimum monthly wage from 1 January 2008 for an average full-time work of 170 hours is RON500 (about US\$220).

From 1 July 2008 the minimum monthly wage will be RON540 (about US\$230). This is conditional on the economy meeting the main economic indicators according to which the 2008 state budget is drafted (these include the increase of the gross domestic product, inflation targeting, and the level of labour productivity).

The minimum wage increases according to employees' education levels, based on ranking criteria.

7. Are there restrictions on working hours? If so, please give details.

Regular working hours are:

- Eight hours a day.

- 40 hours a week.

For employees who are under 18 years old, regular working hours are reduced to:

- Six hours a day.
- 30 hours a week.

Maximum working hours are 48 hours a week, including overtime. Employees can exceed the 48-hour weekly maximum if their average working hours calculated over a period of three months do not exceed 48 hours a week. Employers and employees can negotiate longer reference periods of between three and 12 months at branch level in certain industry sectors, such as:

- Construction.
- Tourism.
- Hotels and restaurants.
- Transport.
- Electricity.
- Chemical and petrochemical.

8. Is there a minimum holiday entitlement? If so, please give details. How many public holidays are there in a year and are they included in the minimum holiday entitlement?

The minimum holiday entitlement is 21 working days a year. An additional holiday of at least three days is given to the following employees:

- Employees who work in difficult, dangerous or harmful conditions.
- Blind employees.
- Disabled employees.
- Employees under the age of 18.

There are five public holidays a year, which are in addition to the minimum holiday entitlement.

9. What rights do employees have to time off in the case of illness or injury? Is that time off paid? Can an employer recover from the state sick pay granted to its employees?

Leave for illness or injury is granted to:

- Employees who have worked at least four weeks during the 12 months preceding the illness or injury.
- All employees who have:
 - urgent surgery;

- tuberculosis;
- certain contagious diseases;
- AIDS.

Employees receive an indemnity during this leave. The employer pays this for the first five days of leave and the Sole National Social Security Fund pays it for the rest of the leave. The monthly indemnity is 75% of employees' average salaries during the six months before the illness. This increases to 100% for severe illnesses.

Employees can take leave and indemnity for a maximum of 183 days a year. This may be increased to 18 months' leave for certain diseases such as tuberculosis and AIDS.

10. What are the statutory rights of employees who are parents or carers (including those of disabled children and adult dependants)? How is employees' pay affected during periods of leave?

Maternity rights

Employees who have worked for at least four weeks during the 12 months before pregnancy are entitled to 126 days' maternity leave, divided as follows:

- 63 days before birth.
- 63 days after birth.

Disabled pregnant employees can request longer maternity leave that starts on the sixth month of pregnancy.

Employees receive an indemnity during this leave from the Sole National Social Security Fund. This is 85% of their average salary during the six months before the leave.

Female employees who lose their insurance for reasons beyond their control (for example, they are dismissed without fault) also benefit from maternity rights if they give birth within nine months of the date of losing their insurance.

Pregnant employees and mothers who recently gave birth also have other statutory rights, including:

- Paid time off for prenatal consultations.
- Maternity risk leave. This is leave of up to 120 days granted when working conditions endanger the health of pregnant employees or mothers who recently gave birth.
- Nursing breaks.

Paternity rights

Fathers can request up to five working days' paternity leave within the first eight weeks of the child's birth. Paternity leave is extended to 15 working days if the employee follows childcare courses.

Adoption rights

Adoptive parents do not benefit from maternity and paternity leave, but have parental rights (*see below, Parental rights*).

Parental rights

Employees who have a child and have worked for at least 12 uninterrupted months are entitled to parental leave of:

- Two years for the first three children. This is increased to three years for disabled children.
- Three months for the fourth child onwards.

During the leave granted for the first three children, employees receive:

- An indemnity of RON600 (about US\$260).
- A monthly child allowance of RON200 (about US\$90).

If employees do not take the leave they are entitled to for the first three children, they receive:

- An indemnity of RON100 (about US\$40).
- A reduction in their working hours of two hours a day. This does not affect their continuity of employment or salary.

The state pays the indemnities and allowance.

Carers' rights

Employees who have a sick child and have worked for at least four weeks during the 12 months before the sickness are entitled to 45 days' leave a year if the child is either:

- Up to seven years old.
- Up to 18 years old and disabled.

The leave can be extended beyond 45 days for certain diseases. Employees receive 85% of their average salary during the six months before the leave, which is paid by the Sole National Social Security Fund.

Employees with other dependants, such as a sick relative, do not have any rights.

11. Does a period of continuous employment create any benefits for employees? If individual employees are transferred to a new entity, are they deemed to retain their period of continuous employment?

Benefits

Continuous employment does not create any benefits. Employees receive a seniority bonus of between 5% and 25% of their base salary for their length of service, but this depends on their total length of employment regardless of whether it was continuous.

Transfer

Employees who are transferred to a new entity retain their period of continuous employment.

TEMPORARY AND AGENCY WORKERS

12. To what extent are temporary and agency workers entitled to the same rights and benefits as permanent employees?

Temporary workers

The Labour Code expressly provides that temporary workers must not be treated less favourably than permanent workers in relation to their hiring and working conditions. This is except for cases where the different treatment is justified by objective reasons.

When there is a vacant position, or a position is about to become vacant, for which a temporary worker has the appropriate training, the employer must:

- Inform the temporary worker about the position.
- Allow the temporary worker access to the position under the same terms as permanent workers.

Agency workers

Except where the Labour Code specifies otherwise, legal provisions and CBAs which apply to permanent workers with the employer to whom the temporary worker has been assigned (user) also apply to agency workers for the duration of their assignment with the user.

Under the Labour Code, the agency workers will have access to all services and facilities that the user provides, under the same terms as the user's other employees. In addition, the salary that the agency workers receive for each assignment must not be lower than the salary that the user's permanent employees receive for the same or similar work.

Between assignments, the agency worker is at the disposal of the temporary work agency and receives pay from that agency at a rate not lower than the minimum national gross salary.

EMPLOYEE PROTECTION

13. What statutory data protection rights do employees have?

An employer can only collect employees' personal data for definite, clear and legitimate purposes. It can only store the data for the duration necessary to achieve these set purposes.

Employees have the following main rights over their personal data (*Law No. 677/2001 for the protection of persons in relation to the processing of personal data (Data Protection Law)*):

- To be informed of the:
 - identity of the data controller and recipient;
 - purpose of the data processing;
 - employee rights under the Data Protection Law; and

- conditions for exercising these rights.

- To have access to data.
- To have data rectified, updated, blocked, removed or made anonymous if the processing does not comply with the Data Protection Law.
- To object to the processing of the data at any time, if this objection is based on justified and legitimate reasons linked to their particular situation.
- Not to be subject to a decision based solely on the processing of the data.
- To file a complaint to the supervisory authority and to refer to a court of law in defence of any of the rights guaranteed by the Data Protection Law.

14. What protection do employees have from discrimination or harassment, and on what grounds?

Discrimination

Employees are protected at recruitment, dismissal and during the course of their employment against discrimination on the grounds of:

- Gender.
- Sexual orientation.
- Genetic characteristics.
- Age.
- Nationality.
- Race.
- Colour.
- Ethnic origin.
- Religion.
- Political opinion.
- Social status.
- Disability.
- Family conditions or responsibilities.
- Trade union membership or activity.

Discrimination is punishable with a fine of:

- RON400 (about US\$172) to RON4,000 (about US\$1,725) for discrimination in relation to a single employee.
- RON600 (about US\$260) to RON8,000 (about US\$3,450) for discrimination in relation to a group of employees.

Harassment

Harassment is prohibited and punishable in the same way as discrimination (see above, *Discrimination*). Sexual harassment is also prohibited and is punishable with a fine of RON1,500 (about US\$647) to RON15,000 (about US\$6,470). In addition, sexual harassment is a crime under the Penal Code, so is punishable with imprisonment of three months to two years or a fine of RON500 (about US\$215) to RON30,000 (about US\$12,940).

15. Do whistleblowers have any protection? If so, please give details.

There is no specific protection for whistleblowers. However, the employer's internal regulations or code of conduct may specify that an employee who reports a breach in good faith will not suffer any adverse consequences.

DISMISSALS AND REDUNDANCIES**16. What rights do employees have when their employment contract is terminated? Please provide information on:**

- **Notice periods.**
- **Severance payments.**
- **Any procedural requirements for dismissal.**

Notice periods

The employer must give a notice period of termination of at least 20 working days. During this period, employees are entitled to be absent from work for four hours a day to find another job, without this affecting their salary rights. The employer can require that these paid hours be taken together.

Severance payments

Employees are entitled to at least one month's salary if their employment contract is terminated for reasons not attributable to them. CBAs may provide for higher severance payments.

Procedural requirements

The employer must communicate dismissals to employees in writing and include certain details in the notice. Other than this universal requirement, procedural formalities vary depending on the type of dismissal. The most complex procedures are for:

- Redundancies (see *Question 18*).
- Dismissals on disciplinary grounds.
- Dismissals for professional unfitness (that is, insufficient or no knowledge of the specific professional rules of the job).

Procedural requirements can include, for example, requirements to:

- Consult with the trade union.

- Investigate.
- Offer the dismissed employee another job.

17. What protection do employees have against wrongful or unfair dismissal? Are there any specific categories of protected employees?

Any unfair dismissal is invalid. The court can compel the employer to:

- Pay the employee any remuneration that the employee would have received since dismissal.
- Give the employee any rights that the employee was entitled to under the employment contract, such as bonuses.
- Reinstatement of the employee to the same position on the employee's request.

If a case is taken to court, the employer cannot provide reasons for the dismissal that were not stated in the original notice.

The employer cannot dismiss employees during their:

- Temporary incapacity from work.
- Pregnancy, if the employer was informed about the pregnancy.
- Maternity leave.
- Parental leave.
- Carers' leave.
- Holiday.
- Exercise of an elected position in a trade union, unless the dismissal is for a serious disciplinary infringement or for repeated disciplinary infringements.

These exceptions do not apply to dismissals that are due to the employer's reorganisation or insolvency.

18. What rules apply on redundancies?

An employer that carries out collective dismissals must comply with certain requirements. A collective dismissal is the dismissal for reasons that cannot be blamed on the employees, within a 30-day period, of at least:

- Ten employees, if the employer has between 21 and 99 employees.
- 10% of the workforce, if the employer has between 100 and 299 employees.
- 30 employees, if the employer has 300 or more employees.

30 days before carrying out a collective dismissal, the employer must:

- Consult with the relevant trade unions and employee representatives on the planned dismissals.
- Notify the planned dismissals to the:
 - trade unions and employee representatives;
 - regional labour inspectorate;
 - regional agency for professional occupation and training.

This notification must contain certain details. The labour inspectorate can delay the implementation of the dismissals by ten days. The dismissal decision is individual and the serving of notices is mandatory.

An employer that carries out collective dismissals cannot fill the dismissed employees' positions with new employees for nine months after the dismissals, unless the dismissed employees refuse to be reinstated.

TAXATION OF EMPLOYMENT

19. What is the basis of taxation of employment income for:

- **Foreign nationals working in your jurisdiction?**
- **Nationals of your jurisdiction working abroad?**

Foreign nationals

Foreigners are subject to Romanian income taxes if they are either:

- Domiciled or resident in Romania.
- Non-resident in Romania but fall into one of the following categories:
 - they are present in Romania for over 183 days during any period of 12 consecutive months, that ends in the relevant taxation year;
 - the employer that pays their salary is resident in Romania;
 - their salary is a deductible expense for a permanent establishment in Romania.

However, if the employee's salary is taxed in another country, a double taxation treaty may regulate the tax treatment to avoid double taxation.

Nationals working abroad

Romanians with a domicile in Romania pay Romanian income tax on income earned abroad. They can deduct the tax paid in the other jurisdiction from the income tax they owe in Romania.

However, a double taxation treaty may regulate exemptions from the payment of income tax in the two jurisdictions. Romanians who do not have a domicile or residence in Romania do not pay any Romanian tax if they leave the country.

20. What is the rate of taxation on employment income? Are any other taxes or social security contributions levied on employers and/or employees? If so, please give details, including the rates.

Income tax

Employment income is taxed at 16%. The employer withholds this tax from the employee's salary. Employees who are responsible for other persons' living expenses (such as a spouse or child) benefit from a personal deduction, the amount of which depends on the number of persons they are responsible for.

Social security contributions

Both the employer and the employees owe social security charges in connection with the employment contract. The employer withholds the charges that employees owe, and pays them all to the relevant social security budget.

The employer pays the following social security charges:

- Social security contribution. This is charged at one of the following rates, on the gross monthly total salary fund:
 - 19.5% for ordinary working conditions;
 - 24.5% for hard-working conditions (for example, employees who work underground in the mining industry); and
 - 29.5% for special working conditions (for example, employees who work with biological products that exceed legally accepted limits).
- Unemployment security fund: 1% of the gross monthly total salary fund.
- Health social security contribution: 5.5% of the gross monthly total salary fund.
- Contribution to the National Insurance Fund for Work Accidents and Professional Diseases: between 0.4% and 2% of the gross monthly total salary fund.
- Contribution to the salaries guarantee fund: 0.25% of the gross monthly total salary fund.
- Contribution for medical live fund: 0.85% of the gross monthly total salary fund.

Employees pay the following social security charges:

- Social security contribution: 9.5% of gross monthly salary.
- Unemployment security fund: 0.5% of gross monthly salary.
- Health social security contribution: 6.5% of gross monthly income.

LIABILITY**21. Are there any circumstances in which:**

- An employer can be liable for the acts of its employees?
- A parent company can be liable for the acts of a subsidiary company's employees?

Employer liability

An employer can be held civilly liable for its employees' acts if certain cumulative conditions are met (for example, damage caused to third parties in the exercise of employment duties, or an illegal action by the employee that produced the damage, and so on). In that case, it is jointly liable for the damage (*Articles 1000(3) and 1003, Civil Code*). If the employer pays for the employees' share of the damage, it can recover this compensation from the employees.

Parent company liability

A parent company cannot be held liable for the acts of its subsidiary company's employees, as the two companies are separate legal entities, unless the subsidiary's employees are seconded to the parent company.

22. What are an employer's obligations regarding the health and safety of its employees?

The employer must ensure the employees' health and safety at work at its own cost. It must:

- Prevent risks to health and safety occurring at work.
- Inform and instruct the employees.
- Ensure the necessary organisation and means to protect health and safety.

Any legal entity with at least 50 employees must establish a health and safety labour committee, to ensure the employees' involvement in the planning and implementation of decisions passed in the field of health and safety.

CONSULTATION**23. Are employees entitled to management representation (such as on the board of directors) or to be consulted about issues that affect them? Is employee consultation or consent required for major transactions (such as acquisitions, disposals or joint ventures)?****Management representation**

Employees are not entitled to management representation within their employer.

Consultation

The employer and trade unions must inform each other of all decisions that relate to the main aspects of employment. Therefore, employers must consult the relevant trade unions and employees' representatives in connection with all decisions that may significantly affect the employees' rights and interests (collective dismissals, establishing work norms, transfers of undertakings, planning health and safety measures, professional training, and so on).

In addition, the employer's board of directors or similar body must invite the trade unions' representatives to attend its meetings. Employee representatives can observe proceedings and express their opinion, but have no voting rights. A company or group of companies can set up a European works council (EWC) if it has at least both:

- 1,000 employees within one EU member state.
- 150 employees in at least two EU member states.

Romanian law applies to the EWC if the company, or the group of companies' central management board has one of the following:

- A seat in Romania or another EU or EEA member state.
- A representative office in Romania.
- A subsidiary, branch or secondary office with the highest number of employees out of its offices in EU member states in Romania.

If there is an EWC, employers must consult and inform it of measures that affect employees' interests. An EWC is a body that employers inform and consult on employee matters.

Major transactions

In relation to a transfer of the whole or part of an undertaking or unit (that is, a legal entity), the old and new employers must:

- Notify the details of the transfer to the trade union or employee representatives at least 30 days before the transfer.
- Inform and consult with the trade union or employee representatives in connection with the legal, economic and social implications of the transfer on the employees before the transfer takes place.

There are no legal consultation requirements on a share sale, but CBAs may provide this right in favour of the employees.

24. What are the remedies that are available if an employer fails to comply with its consultation duties? Can employees take action to prevent any proposals going ahead?**Remedies**

In certain cases (for example, collective dismissals and transfers of undertakings), if the employer fails to comply with its consul-

tation duties, the affected employees or their trade unions can request the court to annul any measures taken without consultation.

Employee action

The only action employees can take is to request annulment of a decision taken without consulting their trade union (see *above, Remedies*).

25. Is there any statutory protection of employees on a business transfer? In particular:

- Are they automatically transferred with the business?
- Are they protected against dismissal (before or after the disposal)?
- Is it possible to harmonise their terms of employment with other (existing) employees of the buyer?

Automatic transfer

If the whole or part of an undertaking or unit is transferred to a new employer, the employees' rights are protected. The new employer automatically takes on all the old employer's rights and obligations arising from the employment contract and CBAs that existed on the date of transfer.

Protection against dismissal

The old and new employers cannot dismiss employees because of a transfer of an undertaking. The old employer cannot dismiss employees to facilitate the transfer. Any employees dismissed in breach of these rules can contest the dismissal in court, and request reinstatement to the same position with the new employer, if the transfer has already taken place.

Harmonisation

On a transfer of an undertaking, the new employer takes on the transferred employees' employment contracts and must comply with their CBA until this terminates or expires. Applicable CBAs can be renegotiated, but no earlier than one year after the transfer. However, if the new employer has a CBA with more favourable provisions, these new provisions apply to the transferred employees instead.

The employer can attempt to harmonise the transferred employees' terms by negotiating with each new employee. However, this harmonisation cannot lead to the transferred employees having fewer rights than those established under their previous CBA, if that CBA still applies.

PENSIONS

26. Do employers and/or employees make pension contributions to the state in your jurisdiction? If so, please give details of:

- The contributions payable.
- The tax treatment of those contributions.
- The monthly amount of the state pension.

Contributions

Pension contributions form part of social security contributions. For social security contribution rates, see *Question 20, Social security contributions*.

Tax

Social security contributions are a deductible expense for the employer.

Monthly amount

The monthly amount of the state pension is calculated individually for each employee, by multiplying the following amounts:

- **The employee's average annual score.** The employee gains a number of points each month, which are calculated by dividing the employee's gross monthly individual salary, including bonuses and other incentives, by the national average gross monthly salary. These are added up to create an annual score, which is then averaged over the contributory period, that is, the years during which the employee made social security contributions.
- **A pension point.** The state social security budget establishes this annually. In 2008, the pension point is RON581.3 (about US\$250).

The monthly amount of the state pension is increased by any contributions to the health fund (see *Question 20, Social security contributions*).

27. Is it common (or compulsory) for employers to provide access, or contribute, to supplementary pension schemes for their employees? Do such schemes provide pensions the value of which:

- Can usually be determined at the start of the arrangement (for example, the value is linked to the employee's salary)?
- Cannot usually be determined at the start of the arrangement (for example, the value is dependent on employer and employee contributions and investment return on those contributions)?

Law No. 204/2006 on facultative pensions gives employees access to a facultative pension. This is a private pension fund in addition to the state pension system. The contributions to the

facultative pension fund can be up to 15% of the employees' gross salary. The employer and employee can split the contributions, or one of them can pay them entirely, for example, if the employer offers pension contributions as an employment benefit. In all cases, the employer must withhold and pay the contributions. The law was only implemented in Romania in 2007, so facultative pension schemes are not common.

The value of facultative pension schemes cannot be determined at the start of the arrangement. This is because it depends on the value of the contributions of the employer and the employee to the facultative pension scheme and on the investments that the insurer (the scheme's administrator) makes. The employee owns the personal assets in his account. The employee has the right to be informed about the insurer's investment policy, associated risks of that policy, and the financial markets on which the contributions to the schemes will be invested.

Currently, there are no legal provisions regulating how payments out of facultative pensions schemes function.

28. Are any tax reliefs available on contributions to supplementary pension schemes (by the employer and employees)? If so, please give details.

The employer's contributions to the scheme are deductible from its taxable base for profit tax, up to a cap of RON658 (about US\$280) per fiscal year for each employee. An employee can also apply the same deduction to his gross salary.

29. Can the following participate in a pension scheme established by a parent company in your jurisdiction:

- **Employees who are working abroad?**
 - **Employees of a foreign subsidiary company?**
-

Employees working abroad or employees of a foreign subsidiary company can only participate in a pension scheme established by a parent company in Romania if this parent company is their employer. They are only entitled to the tax advantages referred to in *Question 28* if they are subject to Romanian income tax.

BONUSES

30. Is it common to reward employees through contractual or discretionary bonuses? Are there restrictions or guidelines on what bonuses can be awarded? If so, please give details.

There are certain mandatory bonuses:

- A seniority bonus.
- A bonus for work during free days and legal holidays that was not compensated with free paid days.
- A bonus for night work.

- A bonus for additional hours that were not compensated with free paid days.
- A bonus for work in difficult, dangerous, harmful or painful conditions.

It is also widespread practice to offer employees supplementary bonuses in addition to the basic wage and to the mandatory bonuses. They can take the form of bonuses for exceptional work, meal tickets, and so on. Employment contracts and CBAs can establish systems for awarding bonuses.

IP

31. If employees create IP rights in the course of their employment, do the employees or the employer own the rights?

Patent rights

In the absence of a specific contractual provision that is more favourable to the employee:

- The employer owns patent rights for inventions made by employees under an inventive task that the employment contract expressly requires. Employees receive a supplementary remuneration for this right, which is established in the employment contract.
- Employees own patent rights for inventions created:
 - during the performance of employment duties;
 - within the employer's business field, by knowing or using the employer's techniques; or
 - with the employer's material help.

Copyright

In the absence of a specific contractual provision, employees own the copyright for their inventions made in the performance of their work duties, including the exclusive right to use them. However, employees can only authorise third parties' use of the invention both:

- With the employer's consent.
- By rewarding the employer for its contribution to the costs of the invention.

If the contract does not specify a term, the assignment is valid for three years from when the invention was delivered to the employer.

Software

In the absence of a specific contractual provision, the employer owns the copyright to software created by employees in the performance of their work duties or under the employer's instructions.

RESTRAINT OF TRADE

32. Is it possible to restrict an employee's activities during employment and after termination? If so, in what circumstances can this be done? Must an employer pay its former employees remuneration while they are subject to post-employment restrictive covenants?

During employment, employees have an obligation of loyalty to their employer, which stops them from engaging in any activities that might affect the employer's interests.

The employment contract can include a non-compete clause to prevent employees competing with the employer after employment. In return, the employer must pay employees a monthly indemnity during the period of restraint. This must be at least half of their average gross monthly salary during the last six months before termination of the employment contract.

PROPOSALS FOR REFORM

33. Please summarise any official proposals for reform of employment law.

The commissions of the Deputies Chamber, the lower house in Romania's bicameral parliament, are currently examining:

- A proposed new law concerning the guaranteed level of the national minimum gross monthly wage. This law provides

that the national minimum gross monthly wage will be established by a CBA concluded at the national level, following negotiations between representatives of the employers and the employees. The government will then approve this wage by a government decision. The level of the national minimum gross monthly wage will not be lower than the "minimum level of personal expenses for one person". The National Institute of Statistics will propose this minimum on a yearly basis, and the government will establish it following that proposal.

When this law enters into force, it will amend the current legal provisions that provide simply that the government will establish the national minimum gross monthly wage after consulting with employer and employee representatives.

- The amendment of Government Emergency Ordinance no. 148/2005 on sustaining the family for the raising of children. This aims to introduce a right for employees (both men and women) to leave to raise children aged between two and three years and to a monthly indemnity of RON500 (about US\$220) during this leave. If the employees do not take this leave, the payment of the indemnity is suspended and they receive a substitute monthly indemnity of RON100 (about US\$40). These rights are in addition to other rights for leave and indemnity under Government Emergency Ordinance no. 148/2005 (see Question 10).

It is unclear when these laws are likely to enter into force.

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